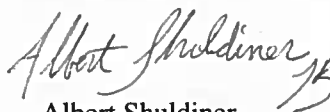


The facts of this proceeding are discussed thoroughly in a December 14, 2017 letter to the parties.² To summarize, VRW involuntarily changed channels in 2013 so that Henderson could upgrade KHTZ(FM).³ VRW documented associated equipment-related expenses of \$57,387.83,⁴ requested that Henderson reimburse that amount, and stated that it was not at that time seeking reimbursement for its legal expenses. Henderson did not reimburse VRW. In a July 2013 pleading that the Bureau is treating as an Informal Objection to the Renewal Application, VRW asked the Bureau to order reimbursement.⁵ Following a Bureau inquiry in 2014, Henderson contested all but \$30,126.52 of VRW's claimed expenses.⁶ Thereafter, VRW sought additional reimbursement for legal and engineering costs associated with the change (\$40,791.25), bringing VRW's total claim to \$98,179.08. In December 2017, the Bureau required Henderson and VRW to enter into good faith negotiations to determine VRW's reasonable and prudent expenses.⁷ The Bureau ordered Henderson to reimburse VRW within 30 days⁸ but, to our knowledge, Henderson still has not done so.

The Bureau will continue to withhold action on the Renewal Application for a period of thirty days from the date of this letter to provide Henderson an opportunity to demonstrate that it has reimbursed VRW for reasonable and prudent expenses associated with the KVIC channel change. Failure to show reimbursement in full within the specified time frame may result in adverse action including dismissal of the Renewal Application for failure to prosecute pursuant to section 73.3568 of the Rules.⁹ Because the KHTZ(FM) license has expired and the station's continued operating authority thereafter has been premised upon the pendency of the Renewal Application, dismissal of the Renewal Application could eliminate KHTZ(FM)'s authority to broadcast.¹⁰

If you have any questions concerning the content of this letter, please contact Irene Bleiweiss, Attorney, by phone (202-418-2785), or e-mail (Irene.Bleiweiss@fcc.gov).

Sincerely,



Albert Shuldiner
Chief, Audio Division
Media Bureau

² See Letter from Peter H. Doyle, Chief, Audio Division to John C. Trent, Esq. (Dec. 14, 2017) (Bureau Letter).

³ See File No. BLH-20130502ACG (granted May 7, 2013).

⁴ The expenses included purchase of a new antenna and 5 kW transmitter; removal and replacement of the prior antenna; and a replacement logo design. See Bureau Letter at 2.

⁵ See VRW Request for Order for Expense Reimbursement (rec. July 24, 2013). VRW supplemented its request in June and July 2014.

⁶ See Bureau Letter at 2. In particular, Henderson argued that he should not be responsible for replacing the transmitter, only for retuning the transmitter. *Id.* VRW, however, responded that reimbursement for a new transmitter is reasonable because the former transmitter could not transmit with an ERP of 12.5 kW, the power specified in VRW's construction permit. *Id.*

⁷ *Id.* at 3.

⁸ *Id.*

⁹ 47 CFR § 73.3568.

¹⁰ See 47 U.S.C. § 307(c)(3).



**Federal Communications Commission
Washington, D.C. 20554**

June 4, 2019

In Reply Refer to:
1800B-IB

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In re: KHTZ(FM), Ganado, TX
Facility ID No. 28477
File No. BPH-20130328ADT

**Inquiry – Response Required
Application for License Renewal
Reimbursement of Expenses**

Dear Counsel:

The above-captioned application of Roy E. Henderson (Henderson) for renewal of the license of Station KHTZ(FM), Ganado, Texas (Renewal Application) has been pending with the Media Bureau (Bureau) for over six years. The Bureau cannot grant the Renewal Application because Henderson has not, as pledged, reimbursed Victoria Radio Works, LLC (VRW), licensee of KVIC(FM), Victoria, Texas, for reasonable and prudent expenses it incurred to change KVIC(FM)'s channel and, thereby to facilitate KHTZ(FM)'s upgrade to the current facilities.¹ As discussed below, we hereby notify Henderson that we will dismiss the Renewal Application for failure to prosecute unless we receive confirmation within 30 days from the date of this letter that Henderson has reimbursed VRW in full.

¹ On January 29, 2010, the staff authorized Henderson to upgrade KHTZ(FM) (then KULF(FM)) from Channel 284C2 to Channel 235C at a new transmitter site. *See Markham, Ganado, and Victoria, Texas*, Report and Order, 25 FCC Rcd 247 (MB 2010) (*Ganado R&O*). To accommodate this channel change, the *Ganado R&O* involuntary modified the license of Station KVIC(FM) to specify Channel 284C3 in lieu of Channel 336C3 at Victoria, Texas. Pursuant to Commission policy, Henderson pledged to reimburse VRW for the reasonable costs associated with the channel change. *See Circleville, Ohio*, Second Report and Order, 8 FCC 2d 159, 163, para. 11 (1967) (*Circleville*) (when an existing station is ordered to change frequency to accommodate another station, the benefitting station must reimburse the affected station for its reasonable and prudent expenses).